

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

WINC, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 22-11238 (LSS)

(Jointly Administered)

**Ref. Docket Nos. 403 & 429**

**NOTICE OF FILING OF EXHIBIT D TO THE PLAN SUPPLEMENT**

**PLEASE TAKE NOTICE** that, on June 27, 2023, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Combined Disclosure Statement and Joint Chapter 11 Plan of Winc, Inc. and Its Affiliated Debtors* [Docket No. 403] (as may be amended, supplemented, or modified from time to time, the “Plan”).

**PLEASE TAKE FURTHER NOTICE** that, on July 20, 2023, the Debtors filed the *Notice of Filing of Plan Supplement* [Docket No. 429] (as may be amended, supplemented, or modified from time to time, the “Plan Supplement”). The Debtors reserved their rights to amend, revise, or supplement the Plan Supplement.

**PLEASE TAKE FURTHER NOTICE** that the *Schedule of Retained Causes of Action*, which is Exhibit D to the Plan Supplement, is attached hereto as **Exhibit 1**.

**PLEASE TAKE FURTHER NOTICE** that copies of the Plan and the Plan Supplement may be obtained upon request of the undersigned counsel for the Debtors at the address specified below, and are on file with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, where they are available for review between the hours of 8:00 a.m. to 4:00 p.m. (ET). The Plan and the Plan Supplement are also available for inspection on the court’s website at <https://pacer.uscourts.gov>, or free of charge on the website of the Debtors’ claims and noticing agent, Epiq Corporate Restructuring, LLC, dedicated to these chapter 11 cases, <https://dm.epiq11.com/Winc>.

**PLEASE TAKE FURTHER NOTICE** that subject to the terms and conditions of the Plan, the Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Winc, Inc. (8960); BWSC, LLC (0899); and Winc Lost Poet, LLC (N/A). The Debtors’ mailing address for purposes of these chapter 11 cases is 12405 Venice Boulevard, Box #1, Los Angeles, CA 90066.

Dated: July 28, 2023  
Wilmington, Delaware

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**EXHIBIT 1**

**Schedule of Retained Causes of Action**

### **Schedule of Retained Causes Action<sup>1</sup>**

This schedule represents a non-exhaustive list of the Retained Causes of Action in connection with the Plan (subject to the terms thereof). The Debtors and Committee expressly reserve the right to alter, modify, amend, remove, augment, or supplement this Schedule of Retained Causes of Action at any time in accordance with the Plan.

As defined in section 1.124 of the Plan, “Retained Causes of Action” means all Causes of Action that are not Transferred Assets. Retained Causes of Action will be retained by the Debtors and transferred to the Creditor Trust in accordance with the Plan. Potential defendants of Retained Causes of Action may include, but shall not be limited to, those persons identified on **Exhibit A** attached hereto. Retained Causes of Action include, but are not limited to the following, in each case subject to the terms of the Plan:

- (i) all Avoidance Actions (other than the Transferred Chapter 5 Claims);
- (ii) direct or derivative Claims or Causes of Action against any and all current and/or former officers, directors, stockholders, members, managers, employees, Affiliates, or insiders of the Debtors, including but not limited to for breach of fiduciary duty or aiding and abetting breach of fiduciary duty, or under and pursuant to any D&O Liability Insurance Policy or fiduciary insurance policy (including for bad faith) maintained by the Debtors, any and all of the Causes of Action listed in or arising from any matter described in the Debtors’ Statements of Financial Affairs and Schedules, commercial tort claims held by the Estates, including but not limited to potential claims or Causes of Action arising under anti-trust laws, the making of loans from any of the Debtors to any related party, including but not limited to employees, directors, and officers, whether asserted or unasserted as of the Effective Date, any and all claims and any avoidance, recovery, subordination or other actions against any persons or other entities under Bankruptcy Code Sections 506, 510, 542, 543, 544, 545, 547, 548, 549, 500, 551, and 553 or otherwise, whether included in the list of creditors receiving payments within 90 days prior to the Petition Date or within one year prior to the Petition Date for insiders set forth in the Debtors’ Statements of Financial Affairs, except to the extent expressly released or excluded by the Confirmation Order or the Plan;
- (iii) the right to seek a determination by the Bankruptcy Court of any tax, fine, or penalty relating to a tax or any addition to a tax, under section 505 of the Bankruptcy Code; and
- (iv) all other Claims or Causes of Action arising in contract or tort or under a statute, including but not limited to Claims or Causes of Action arising from or relating to (1) overpayments, back charges, duplicate payments, improper holdbacks,

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the *Combined Disclosure Statement and Joint Chapter 11 Plan of Winc, Inc. and Its Affiliated Debtors* [Docket No. 403] (as may be amended, modified, and/or supplemented from time to time, the “Plan”).

deductions owing or improper deductions taken, deposits, warranties, guarantees, indemnities, recoupment, or setoff; (2) wrongful or improper termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (3) failure to fully perform or to condition performance on additional requirements under contracts with any one or more of the Debtors before the assumption or rejection, if applicable, of such contracts; (4) payments, deposits, holdbacks, reserves or other amounts owed by any creditor, utility, supplier, vendor, insurer, surety, factor, lender, bondholder, lessor or other party; (5) for any liens, including mechanics', artisans', materialmen's, possessory or statutory liens held by any one or more of the Debtors; (6) environmental or contaminant exposure matters against landlords, lessors, environmental consultants, environmental agencies or suppliers of environmental services or goods; (7) for counter-claims and defenses related to any contractual obligations; and (8) unfair competition, interference with contract or potential business advantage, breach of contract, infringement of intellectual property or any business tort claims.

Pursuant to the Creditor Trust Agreement and Plan, the Creditor Trustee may assert, pursue, litigate, investigate, prosecute, and/or compromise and settle the Retained Causes of Action, without further approval of the Court or any other body.

**No entity may rely on the absence of a specific reference in the Plan, the Plan Supplement (including this Schedule of Retained Causes of Action), or the Creditor Trust Agreement to any Retained Causes of Action against it as any indication that the Creditor Trustee will not, or may not, pursue any and all available Retained Causes of Action against it. The Creditor Trustee expressly reserves all rights to prosecute any and all and all Retained Causes of Action against any Entity.**

Unless any Retained Causes of Action against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Debtors and, upon transfer of the Retained Causes of Action to the Creditor Trust in accordance with the Plan, the Creditor Trustee expressly reserve all Retained Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches shall apply to such Retained Causes of Action upon, after, or as consequence of, confirmation or consummation of the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Retained Cause of Action that any Debtor may hold against any Entity shall vest in the Creditor Trustee.

Notwithstanding any of the foregoing, the Debtors and Committee reserve all rights to raise any defenses, including, but not limited to, those related to setoff or other offsets in connection with filed proofs of claim under applicable law, including, but not limited to, section 502(d) of the Bankruptcy Code until such time that the Debtors transfer such rights to the Creditor Trustee pursuant to the Plan.

**Exhibit A**

**Potential Defendants for Retained Causes of Action**

This list is made solely for representative purposes only and is not intended to be, and shall not be construed to be, inclusive and/or exhaustive of all potential defendants for any or all Retained Causes of Action, and is subject to further diligence and investigation. Nor should this list be construed to mean that any Person included herein shall be the defendant of any Retained Cause of Action.

1. Matthew Thelen
2. Brian Smith
3. Carol Brault
4. Geoffrey McFarlane
5. Patrick DeLong
6. Laura Joukovski
7. Alesia Pinney
8. Mary Pat Thompson
9. Xiangwei Weng
10. Verity Wines LLC
11. Rosenthal & Rosenthal, Inc.
12. Trinity Beverage Group LLC
13. Hill Flynn
14. Mike Bell
15. John Does 1 through 100